

LOCAL

Armed with dusty old maps, activists fight to reclaim beach access in Weekapaug

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WESTERLY — Ben Weber started working for his father's construction company when he was a teenager. So a few years later, when a security guard at Fenway Beach in Weekapaug tried to tell him that he wasn't supposed to be there because it was private, he knew the solution was to find a public easement.

Weber, then 20, went to Westerly Town Hall and came away with a map that he held on to for years. In his recollection, it showed that the state owned a section of the cove that was shaped like a slice of pie, with the widest part providing ample room to throw down a towel on the dry sand. Because it was public land, the Weekapaug Fire District, which owns the rest of the beach, couldn't eject him.

He eventually lost that map, something he's still upset about, and he's never found another one like it. But more than two decades later, he's using that same strategy to fight for the public's right to access the shoreline in Westerly.

Frustrated by the number of security guards and "Private — Residents Only" signs that have proliferated in his hometown, Weber has been spending hours digging through old land records in the basement of Town Hall. His goal is to rediscover public rights of way that have been lost over time, and take on the fire districts that restrict access to some of the most desirable parts of Westerly's coastline.

"It's crazy to say people can't enjoy a natural resource," he said. "That's an inalienable right."

Who owns the right of way to Quonochontaug Barrier Beach?

Working with other activists in the area, who have been gathering archival evidence of their own, Weber is fighting to reopen a barricaded right of way at Quonochontaug Barrier

Beach — which, confusingly, some locals call Weekapaug Beach.

Before he was born, his family regularly drove down to tailgate there. But in recent summers, the pristine two-mile stretch of sand has effectively been closed to anyone but a select group of homeowners.

That's because Weekapaug Fire District, which doesn't fight fires and functions more like a homeowners association, controls the only pathways onto the beach and has security guards keeping the public at bay.

Rhode Island's Constitution guarantees the right to passage along the shoreline, but it doesn't say you have the right to walk across dry sand to get there. That's why having public rights of way is "imperative," Weber said. And there's potentially one that leads to Quonochontaug Barrier Beach, but it's blocked by a fence and overgrown shrubbery.

More: Waterfront Warwick neighborhoods are full of 'No Parking' signs. Many aren't legal.

The Weekapaug Fire District claims it owns the right of way, which is known as Spring Avenue Extension. Weber and other activists say there's evidence to the contrary — and they've gotten some high-profile support from Michael Rubin, a former assistant attorney general of Rhode Island and an expert on shoreline access.

Rubin, who is volunteering his time and said he only represents himself, believes that he found an overlooked piece of evidence that amounts to a "smoking gun" during one of his own trips into the bowels of Westerly Town Hall. He categorizes the fire district's attempts to control the right of way as "white-collar vigilantism."

It's now up to the Coastal Resources Management Council to sift through the growing pile of evidence — which includes everything from midcentury family photos to an engineering professor's 10-page report on the corrosion of a chain-link fence — and decide which side is correct.

"Weekapaug Fire District has done a good thing, in a way," said Steve Cersosimo, who for years has advocated for expanding access. "They've kept that place beautiful and pristine. But it needs to be used."

A blocked path, and a man on a mission

Weber likes to surf, and he said that sitting by the ocean "is like medicine for me." But his insistence on being able to get to the water is rooted in something more fundamental.

"It's food," he said.

During the Great Depression, people in Westerly survived by turning to the ocean and coastal salt ponds for sustenance — crabbing, clamming, fishing and gathering seaweed for fertilizer. Weber's great-grandparents were among them, he said.

Growing up in the 1980s, Weber learned to crisscross between barrier beaches and salt ponds on footpaths that only year-round residents knew about. His father taught him that the best place to fish was in the rip current on the east side of the Weekapaug Breachway, off an unmarked trail that crossed a Weekapaug Fire District parking lot and ended at Fenway Beach.

Then, in the summer of 2020, Weber arrived to find that the trail had been blocked off, and security guards wouldn't let him down to what he thought of as his secret spot.

"That's how this all started," he said.

Although he no longer had the map that he'd obtained as a 20-year-old, Weber recalled that there was an easement for the state to make repairs to the breachway. He began filing record requests, looking for documents that would prove that people could walk down to the beach along public land.

A few months later, the CRMC and Department of Environmental Management issued a statement saying that surveyors had "confirmed a significant swath along the Breachway is state property," and a new trail was being built on that land. Then-DEM Director Janet Coit obliquely referenced "misunderstandings," but didn't address who had blocked access in the first place.

Weber wasn't satisfied. He set out on a mission to find all the other paths that traditionally were used as rights of way but had vanished or been blocked over the years. Day after day, he headed to the Westerly Library or the dusty vault underneath Town Hall to scour old maps for roads that led to the beach in the 19th and early 20th centuries.

Because the CRMC doesn't have the authority to create new rights of way, expanding access to the shoreline requires identifying ones that technically already exist. One common method is to search for the tail end of roads that went down to the water, since that final segment often wasn't fully developed or paved along with the rest of the street.

More: Is this wealthy RI town using parking tickets to limit the public's access to the beach?

Another is to find so-called "paper streets," which were included on plat maps for proposed subdivisions but never got built. If a town formally accepted the developer's plans for those streets, they can potentially become public rights of way.

Weber already knew how to read a plat map from the years he'd spent building houses, and he began connecting with people who were doing similar research in other towns through the Facebook group Saving RI Coastal Access/Rights of Way.

Before long, he could rattle off the differences between an incipient dedication and a prescriptive easement. He started reading up on the public trust doctrine, the principle that undergirds the constitutional right to shoreline access, going back to its origins with the Byzantine emperor Justinian.

"They underestimated me," Weber said. "And they picked a fight with the wrong person."

The 'best beach' that most Rhode Islanders will never see

Stretching all the way from Charlestown to Westerly, with views of Block Island Sound, Quonochontaug Barrier Beach is a shimmering expanse of immaculate sand and little else besides dune grass and the occasional scrub pine.

"The best beach in all of Rhode Island is this beach," said Cersosimo, who's been catching bass and bluefish there for more than 40 years. "I guarantee it."

The average Rhode Islander may never get a chance to find out if they agree, though, because most of the sand above the high tide line is claimed by the Weekapaug Fire District and a few allied groups.

As the name implies, fire districts were originally created to fight fires in the early 20th century. Some still do, but others now hire outside contractors for that work and have branched out into offering amenities such as beaches, docks and tennis courts.

As quasi-municipal agencies, they're allowed to collect taxes from homeowners and use that money to provide services that are exclusively for their residents.

The Public's Radio, which has an ongoing series on the unusual powers granted to some fire districts, recently reported that only 15% of the money that the Weekapaug Fire District spent in the last fiscal year went to fire services. A third went to beaches and public safety, including the security guards who prevent nonresidents from walking onto the sand.

"The fire district doesn't even have a fire department," Cersosimo said. "They just try to find ways to privatize the beach, and we're not going to let them get away with it anymore."

During the offseason, anyone can walk onto beaches owned by the fire district. But in summer, you need one of the buttons that are distributed to members and guests. Two fire districts that don't have their own beaches — Shady Harbor in Charlestown and Shelter Harbor in Westerly — also lease portions of the beach from Weekapaug for their residents' use.

As a member of the general public, you're allowed to hike the roughly 1.7 miles along what's known as the Sand Trail, which runs the length of the barrier beach and is used for off-roading once summer winds down. But you're not allowed to leave that trail, which eliminates the possibility of wading along the water's edge.

Alternatively, you can spend \$700 a night to stay at the Weekapaug Inn, which says that its amenities include "two miles of private Rhode Island beach."

Cersosimo has a better deal: He's part of Rhode Island Mobile Sportfishermen, a small fishing club with a shack on the barrier beach that had to go to court to prove that its members had the right to get to that land. As a result of the litigation, he and other club members can drive out there anytime.

But it doesn't sit right with him that the rest of the public is kept out.

The battle of Spring Avenue Extension: Part 2

No one in Westerly seems to be sure when Spring Avenue Extension was barricaded. Some guess the 1960s, others the '80s. The Weekapaug Fire District commissioned a report from a University of Rhode Island engineering professor, who analyzed the rust and concluded the fence probably dates back to about 1957.

In any case, the fence didn't initially stop anyone from getting to the beach: The public could use the boardwalk that the fire district built just a short distance away. It wasn't until years later that security guards began stopping nonresidents from entering.

In summer 2008, Westerly's Town Council asked for a legal opinion on whether Spring Avenue could potentially be a public right of way. A few months later, attorney Charles Soloveitzik reported that he had found "conflicting evidence," and the street shouldn't be deemed public without further research.

Questions about the ownership of Spring Avenue Extension resurfaced last summer, after the fire district blocked off the 14 parking spaces at the top of the barricaded trail. It turned out that those spots belonged to the Town of Westerly — and some residents started to question why you'd need so many parking spots next to what the town maintained wasn't a public right of way.

As far as Westerly's Town Council was concerned, the matter was settled back in 2008. But not everyone agreed. The town had never done any more research into the issue, so shoreline access advocates decided to take matters in their own hands.

"The following pictorial timeline is the result of less than three weeks of effort by no one with specialized investigative training and/or experience," stated a 60-page document that Weber, Cersosimo and a handful of others presented to the council last fall. It contained vintage postcards, archival photographs and yellowed newspaper articles showing how the trail was historically used by the beachgoers over the years — along with maps suggesting that it was open to the public from the very beginning.

More: The little-known story of why Narragansett can charge you admission at Town Beach. Activists also found that back in 2008, while the town's lawyer was reviewing the right of way, the Weekapaug Beach Company filed a notice that it was revoking any previous offer to make Spring Avenue Extension a public road. The fire district, which gradually bought up most of the Beach Company's holdings, purchased the land for \$1 in 2015.

"That's just not the way things are done," Rubin said. To revoke the dedication of a public street, you're required to get consent from every homeowner on that plat, he said.

Cersosimo had provided the town manager with a slew of evidence back in 2008, and he didn't have much faith that the outcome would be different in 2020. In his view, elected officials in Westerly typically want to avoid doing anything that could lead to a costly lawsuit from the fire district.

So he urged people to speak up at town meetings and tell the council that they wanted the matter referred to the CRMC.

The council listened, "because of the fact that there was such a public outcry," Cersosimo said. "That's the only way we're going to win against the rich people."

A 'smoking gun' in a dusty basement

One day in August, Michael Rubin descended the narrow spiral staircase that leads to Westerly Town Hall's subterranean records vault. Massive bound volumes of plat maps and land records lined the shelves. Every time he pulled one out, a cloud of dust rose up.

Rubin, who serves on the state legislature's shoreline access study committee, hadn't been looking for another project. But activists urged him to look into Spring Avenue Extension.

Before long, he said, "I became addicted."

Down in that dark and dusty basement, Rubin unearthed what he calls his "smoking gun." It wouldn't have looked like much to the average person — just a small red stamp inked at the bottom of a blueprint from April 1939. But it was exactly what he had been hoping to find.

The stamp indicated that the Town of Westerly had accepted plans drawn up by the Weekapaug Beach Company, laying out the subdivision that today is part of the fire district. Crucially, the developer didn't indicate on those plans that any part of Spring Avenue was private — including the small southern portion that was supposed to end at the beach.

By literally rubber-stamping its approval, Rubin said, Westerly was acknowledging that Spring Avenue was a public road. Once that happened, it could only be made private through a formal abandonment process, which requires holding public hearings.

But rather than go through those steps, the fire district attempted what amounts to "a naked land grab," Rubin said.

'We have them two ways'

Thomas J. Liguori Jr., the attorney for the Weekapaug Fire District, said he can't comment on the case while the CRMC's review is ongoing, beyond confirming that he plans to respond to the new evidence in a filing of his own.

The initial memo that Liguori submitted to the CRMC emphasized the notion that Westerly had never formally accepted Spring Avenue as a public road. In a September email to the agency, Liguori acknowledged that the plat map actually was approved by the Town of Westerly, which he hadn't known before Rubin's discovery.

Liguori had been using the same plat map — but he'd downloaded a digitized copy online instead of venturing into the basement of Town Hall. The faint red ink stamped on the blueprint in 1939 didn't show up when the document was scanned many years later and converted to black and white.

In his memo, Liguori contended that the developer who first created the subdivision had intended all the streets to be private, noting that a deed from one of the first lots sold in 1884 references "a perpetual right of access to Atlantic Beach over and upon several private roads."

But Rubin feels there's a strong case for recognizing Spring Avenue as a public right of way. Maps from the 1880s list some streets in the neighborhood as private — but not this one, he said.

And while historic photographs might not be definitive proof on their own — "just because you can show pictures of someone's grandmother down at the beach, that doesn't make it public" — in this case they back up the evidence from the plat maps.

"We have them two ways," he said.

The battle is hardly over. But even if the CRMC decides that the fence should stay up, Cersosimo said, "We're not going to stop."